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RINA M. GONZALES

October 1, 2004

RECEIVED & INSPECTED
OCT 4 - 2004
FCC - MAILROOM**BY UPS NEXT DAY AIRMAIL**Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743**DOCKET FILE COPY ORIGINAL**

Re: In the Matter of Request for Review of Decision of the Universal Service Administrator by Spectrum Communications Cabling Systems, Inc.
CC Docket No. 02-6
Billed Entity Name: Riverside County Office of Education
Billed Entity Number: 143743
E-Rate Funding Year 1999-2000
FCC Form 471 Application Number: 148309
Schools and Libraries Division letter dated: October 3, 2003

To Whom It May Concern:

Best, Best & Krieger LLP represents the Riverside County Office of Education ("RCOE") in the above-referenced matter and is writing this letter on RCOE's behalf. This letter is related to the appeal filed on or about August 30, 2004 by Spectrum Communications, Inc. ("Spectrum") with your office. Spectrum's appeal concerns the letter sent to Spectrum and RCOE on October 3, 2003, from the Universal Service Administrative Company, Schools and Libraries Division ("USAC/SLD") which requested recovery of approximately \$700,000 in allegedly erroneously disbursed funds.

As background, in December 2003, both RCOE and Spectrum filed separate appeals with USAC/SLD regarding the issues raised in the October 3, 2003 letter. On about July 6, 2004, our office received a copy of the USAC Administrator's Decision on Appeal for Funding Year 1999-2000 ("Administrator's Decision"). A copy of the Administrator's Decision is attached hereto as Exhibit "A." The Administrator's Decision is addressed to Spectrum and states that the appeal was denied in full, specifically finding that the factual background of this matter supported the SLD's decision and SLD appropriately valued the equipment at issue using the July 1, 1999 valuation date. The Administrator's Decision explains that the Federal Communications Commission has provided that repayment of erroneously disbursed funds will be sought "from service providers rather than schools and libraries because [] service providers actually receive

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disbursements of funds from the universal service support mechanism.” (See Exhibit A at p. 2.) RCOE understands the Administrator’s Decision to provide that USAC will seek reimbursement from Spectrum, not RCOE.

On behalf of RCOE, our office contacted a USAC attorney in Washington D.C., to verify our understanding of the Administrator’s Decision. The USAC attorney confirmed that USAC will only be seeking recovery from Spectrum. She also indicated that she understood RCOE’s letter to ask for confirmation that recovery of the allegedly erroneously disbursed funds would be sought from Spectrum, as the service provider, and not from RCOE. Because RCOE’s letter was not considered a true “appeal,” the USAC attorney stated that USAC/SLD would not provide a decision letter to RCOE. Because USAC confirmed our understanding, we did not pursue the matter further.

Recently, RCOE received a copy of Spectrum’s appeal to the FCC. One argument in that appeal requests that liability be imposed on RCOE. Spectrum argues that, if the FCC concludes that funds were disbursed in error, then it should also conclude that RCOE “is responsible for any unpaid monies that are the result of its not paying the non-discounted portion of the E-rate services it purchased.” (Spectrum Appeal at pp. 20-21.) A footnote to that statement requests that, if the FCC agrees with the USAC determination, RCOE should immediately be given an “opportunity” to pay an invoice from Spectrum for the alleged “shortfall in matching funds.” (Spectrum Appeal at fn. 39.) That is, Spectrum is seeking to shift the USAC/SLD request for recovery onto RCOE, and to recover additional payment for itself at the same time.

This argument is the first assertion by Spectrum, of which RCOE received notice, that RCOE should be liable for the allegedly erroneously disbursed funding. RCOE denies that it is liable for any of the allegedly erroneously disbursed funding, as set forth in RCOE’s letter dated December 2, 2003 to USAC/SLD. A copy of that letter is attached hereto as Exhibit “B.” If the FCC is considering taking a position contrary to that previously represented by the USAC to RCOE and holding RCOE liable for a portion of the allegedly erroneously disbursed funding, RCOE requests that it be afforded the opportunity to brief the issues before any decision is reached. It would be prejudicially unfair and a denial of due process to consider Spectrum’s argument without allowing RCOE to address this issue when RCOE relied on the Administrator’s Decision that recovery would be sought directly from Spectrum.

We are aware that the appeals process regarding USAC/SLD issues is an extended process. Unfortunately, Spectrum’s recent appeal to the FCC was the first time it advanced allegations that recovery should be sought from RCOE. If the FCC determines that additional briefing is necessary on the issue of who is responsible for repayment of allegedly erroneously disbursed funding, RCOE is prepared to brief the issue promptly to avoid any undue delay in finalizing this process.

LAW OFFICES OF
BEST BEST & KRIEGER LLP

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If your office has any questions regarding this matter, please do not hesitate to contact our office at (951) 686-1450 or via e-mail at <Rina.Gonzales@bbklaw.com>. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rina M. Gonzales", with a long horizontal flourish extending to the right.

Rina M. Gonzales
for BEST BEST & KRIEGER LLP

Exhibit "A" – Administrator's Decision dated July 1, 2004
Exhibit "B" – RCOE December 2, 2003 letter to USAC/SLD



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 1999-2000

July 1, 2004

Pierre F. Pendergrass
Spectrum Communications Cabling Services, Inc.
226 North Lincoln Avenue
Corona, CA 92882

RECEIVED

JUL 06 2004

Re: R O P Riverside County

BEST BEST & KRIEGER

Re: Billed Entity Number: 143743
471 Application Number: 148309
Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,
299365, 299367, 299368, 299370, 299371,
299372, 299373, 299376, 299377, 299378,
299379, 299381, 299382

Your Correspondence Dated: December 2, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision concerning your appeal of SLD's Funding Year 1999 Recovery of Erroneously Disbursed Funds (REDF) Decision for the application number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one application number, please note that for each application an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,
299365, 299367, 299368, 299370, 299371,
299372, 299373, 299376, 299377, 299378,
299379, 299381, 299382

Decision on Appeal: **Denied in Full**
Explanation:

- You have stated on appeal that the SLD determined that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year, in this case July 1, 1999. You also state that the SLD has relied upon an independent appraisal that Spectrum provided in order to determine the value of the equipment on July 1, 1999. You feel that the SLD

determination in this matter is misguided and SLD should cease its attempt to recover funds disbursed. You close by stating that it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule of FCC guidance on this issue existed at the time the transaction occurred. In fact, the SLD neither announced a rule nor sought guidance from the FCC on this issue until the first quarter of 2003, four years after the transaction. You add that although the independent appraisal Spectrum provided did value the equipment in the amounts indicated in the REDF Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first hand knowledge of the actual pieces of equipment in question. Further, the appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old.

- Upon thorough review of the appeal letter and relevant documentation, we find that the facts support SLD's decision. An Internal Audit found that Spectrum Communications accepted a trade-in amount for the above funding requests. This is permitted under program rules because the original equipment was not purchased with program funds. After the Audit findings, the applicant argued that the calculation of the Fair Market Value (FMV) of the equipment should not be based on a 3-year straight-line depreciation schedule, and SLD accepted this presumption. However, the trade-in amount was based on the value of the equipment at the time of the contract, which was before the start of the funding year and several months before Spectrum was set to take possession of the equipment. Spectrum provided an independent appraisal indicating the FMV of the equipment as of July 1, 1999. SLD has accepted this appraisal and determined that the recovery amounts should be based on the date that Spectrum took possession of the equipment, but no earlier than the first day of the funding year. Although the agreement was executed in March 1999, you have indicated that the equipment was not transferred until after the start of Funding Year 1999. Therefore, it is appropriate for SLD to value the equipment as of July 1, 1999. In its role as program Administrator, USAC must ensure that there is no waste, fraud and abuse. Consequently, the appeal is denied.
- The FCC has directed USAC "to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute" and to pursue collection of any disbursements that were made in violation of a federal statute. *See In re Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 97-21, 96-45, FCC 99-291 ¶ 7 (rel. October 8, 1999). The FCC stated that federal law requires the Commission to "seek repayment of erroneously disbursed funds" where the disbursements would violate a federal statute. *Id.* ¶¶ 7, 1. The FCC stated that repayment would be sought "from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism." *Id.* ¶ 9.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of

your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Mr. Elliott Duchon
R O P Riverside County
3939 Thirteenth Street
Riverside, CA 92502

cc: Rina M. Gonzales
Best Best & Krieger LLP
3750 University Avenue
Post Office Box 1028
Riverside, CA 92502-1028

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December 2, 2003

Letter of Appeal
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Re: Billed Entity Name: Riverside County Office of Education
Billed Entity Number: 143743
E-Rate Funding Year 1999-2000; FCC Form 471 Application Number: 148309
Schools and Libraries Division letter dated: October 3, 2003

Dear School and Libraries Division:

The law firm of Best, Best & Krieger LLP represents the Riverside County Office of Education ("RCOE") in this matter and is filing this letter of appeal on its behalf. This appeal concerns the letter sent to RCOE on October 3, 2003, from the Universal Service Administrative Company ("USAC"), Schools and Libraries Division ("SLD").¹ The SLD letter states that SLD determined that funds were disbursed in error. The letter asserts that RCOE did not pay a portion of the discounted charges for which it was responsible, and demands reimbursement of a portion of the moneys paid to Spectrum Communications Cabling Services, Inc. ("Spectrum"), the service provider for the contracts in question. SLD's decision is based on its position that trade-in equipment was over-valued, in part because SLD utilizes a later trade-in date than that used by Spectrum when it valued the equipment. The SLD decision demands the repayment of \$707,521.34 which was allegedly erroneously disbursed for the benefit of 16 individual school districts. A true and correct copy of the letter decision from which RCOE appeals is attached hereto as Exhibit "A." RCOE appeals on the ground that any moneys found due and owing to USAC, SLD should be recovered from Spectrum, not RCOE.

RCOE is filing this appeal because SLD sent a copy of its decision letter to RCOE, and that letter did not identify the party from which SLD was proposing to recover the allegedly wrongfully disbursed funds. The letter does not demand reimbursement from RCOE or offer any authority

¹ RCOE is informed and believes that this same letter and request from the SLD was also sent to Spectrum Communications Cabling Services, Inc. because Spectrum was the Service Provider for RCOE and received direct payment from the USAC, SLD for the funding year at issue.

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December 2, 2003
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supporting an attempt to recover any portion of the allegedly erroneously disbursed funds from RCOE. RCOE requests that the SLD confirm that it is not seeking any reimbursement from RCOE.

The person who can most readily discuss this appeal with the SLD is:

John E. Brown
Attorney for Riverside County Office of Education
Best Best & Krieger LLP
3750 University Avenue, Suite 400
Riverside, CA 92507
Phone: (909) 686-1450
Facsimile: (909) 686-3083
E-mail: JEBrown@bbklaw.com

Factual Background

RCOE is a service agency which provides support for 23 school districts within Riverside County. As such, RCOE may serve as an agent for the school districts in acquiring federal and state funding.

In late 1999, RCOE filed a Federal Communications Commission ("FCC") Form 470 application with USAC as a consortium, on behalf of its school districts, for E-rate Year 2 funding. The fiscal year for which RCOE sought funding by that application was 1999-2000. After RCOE's FCC Form 470 application was approved, it was posted on the Internet as required by 47 C.F.R. section 54.504.

RCOE selected Spectrum from the interested vendors to be the service provider for the county school districts. The decision to select Spectrum was based, in part, on the fact that Spectrum had worked with many of the school districts as part of the county's "Riverlink Project."² Based on its work in 1998 on the Riverlink Project, in which Spectrum supplied equipment to school districts, Spectrum knew of the existing equipment and technology needs of many of the school districts. The decision to select Spectrum also was based, in part, on the fact that Spectrum had experience as an E-rate service provider. Based on that experience, Spectrum counseled RCOE and the school districts that the districts could trade-in, and Spectrum would accept, existing equipment³ for the new equipment.

² The RCOE Superintendent's goal of the Riverlink Project was to get a majority of Riverside County school classrooms connected to the Internet.

³ Any equipment traded-in was not purchased with Universal Service Funds (i.e., non-E-rate funded equipment.).

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In or around January 2000, RCOE took the next step toward securing E-rate Year 2 funding and submitted a consortium application – FCC Form 471 – for fiscal year 1999-2000 to the USAC, SLD on behalf of 23 school districts. This application included the estimated costs for each district's technology installation. The estimated costs in the FCC Form 471 were derived from meetings between RCOE, Spectrum and the school district Technology Directors or district employee(s) with responsibility for technology. At the meetings, each district explained its present technology status to Spectrum so that Spectrum could estimate the district's equipment needs.

On or about April 18, 2000, RCOE received a Funding Commitment Decision Letter from USAC which indicated that RCOE's FCC Form 471 application was approved as submitted. The Funding Commitment Decision Letter indicated that each district would be responsible for paying 33% of the technology installation, while the other 67% would be paid directly to the identified service provider – Spectrum – by USAC.

Sixteen of RCOE's school districts took advantage of Spectrum's offer to credit trade-in equipment value to meet some or all of their 33% match obligation. Those 16 school districts are now the subject of SLD's request for recovery of allegedly erroneously disbursed funds. The 16 school districts are as follows: (1) Alvord Unified School District; (2) Banning Unified School District; (3) Corona/Norco Unified School District; (4) Desert Sands Unified School District; (5) Hemet Unified School District; (6) Jurupa Unified School District; (7) Lake Elsinore Unified School District; (8) Menifee Unified School District; (9) Moreno Valley Unified School District; (10) Murrieta Valley Unified School District; (11) Palm Springs Unified School District; (12) Palo Verde Unified School District; (13) Perris School District; (14) Romoland School District; (15) Temecula Valley Unified School District; and (16) Val Verde Unified School District.⁴ All other districts that participated in Year 2 did not trade-in equipment, but instead made a cash payment for their 33% match amount to Spectrum.

Although the application was filed by RCOE, each school district was individually responsible for management of the funding and program implementation with the district schools. Each school district dealt directly with Spectrum to identify its technology needs and to identify equipment to be traded in. Each school district separately negotiated the trade-in value, based in large part on Spectrum's expertise and knowledge in the technology industry and proposed trade-in valuations. Each school district separately issued purchase orders to Spectrum, using California's Multiple Award Schedule ("CMAS") contracting procedure, to obtain the services and equipment ultimately ordered. Given the very short time frame available to proceed with the project for the school districts, RCOE and the school districts had to rely on Spectrum's experience implementing the district's technology goals, awareness of the districts' existing technology, knowledge of the fair market value of that

⁴ RCOE was informed that Corona/Norco Unified School District and Jurupa Unified School District would both trade in old equipment and make a cash payment to meet their 33% match amounts.

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technology, and evaluation of district needs regarding upgrades. RCOE relied on the values that were provided by Spectrum and agreed to by the school districts with respect to both the trade-in value and the scope and cost of each district's technology installation.

In or around October 2001, USAC engaged Arthur Andersen to conduct an audit of the RCOE application. The audit was undertaken with the assistance of RCOE, the school districts and Spectrum. As a result of the audit, Arthur Andersen questioned the trade-in value placed on the used equipment. Spectrum then commissioned an independent appraisal of the trade-in equipment. Based on the Arthur Andersen audit and using July 1, 1999 appraisal values from the Spectrum appraisal report, on or about October 3, 2003 USAC sent both RCOE and Spectrum a letter requesting "Recovery of Erroneously Disbursed Funds" to both parties for the amount of \$707,521.34.

The October 3, 2003 letter from the SLD alleges that the Universal Service Funding provided to the 16 districts listed above was "erroneously disbursed" and provides the following explanation to each district:

"Disbursed Funds Recovery Explanation: After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of [dollar amount differs for each district] is required. A beneficiary audit discovered that the service provider accepted trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date that service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only [dollar amount differs for each district], which is [dollar amount differs for each district] less than the non-discounted share of [dollar amount differs for each district] that the applicant was obligated to pay. Since the applicant did not cover [dollar amount differs for each district] of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to [dollar amount differs for each district]. As a result this amount of [dollar amount differs for each district] determined to have been erroneously disbursed and must now be recovered."

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RCOE is informed and believes that Spectrum intends to appeal the SLD's decision on the ground that all trade-in equipment should be valued on or around March 1, 1999. As discussed below, RCOE has no obligation to refund any of the funds received by Spectrum in connection with the E-rate Year 2 funding at issue. However, to the extent that USAC seeks to recover any moneys from RCOE, any amount sought should be adjusted based on the extent that Spectrum is successful in establishing a higher trade-in value than that reflected in the SLD decision.

Grounds for Appeal

1. Spectrum Is Responsible for the Repayment of Any Funds Found to Be Erroneously Disbursed

In FCC Order No. 99-291,⁵ the FCC directed USAC to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute. The FCC stated that it would seek payment from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism. (FCC Order No. 99-291, ¶ 8.)

In the instant action, although the SLD has not claimed that the allegedly erroneous disbursement of funds is a violation of a federal statute, the principles articulated in FCC Order No. 99-291 should apply. As an experienced technology service provider, Spectrum assisted the districts in determining what technology was required, provided pricing for that technology as a CMAS vendor, and provided what it represented to be the fair market value of all trade-in equipment.⁶ The districts relied on Spectrum's superior knowledge and representations as to the value of the trade-in equipment when they made their ultimate decisions as to what new equipment to purchase and when they determined the additional funding, if any, that was necessary to secure that equipment. Similarly, RCOE relied on the information provided by Spectrum in preparing the application on behalf of the school districts and representing that the school districts had secured access to all resources necessary to pay the discounted charges for eligible services.

To the extent that SLD establishes that the trade-in values were overstated, Spectrum was the party with superior knowledge as to the appropriate fair market value for the equipment. Further, based on Spectrum's assertion of experience and expertise as an E-rate funding service provider, RCOE and the districts relied on Spectrum to have knowledge of the appropriate trade-in valuation

⁵ A true and correct copy of FCC Order No. 99-291 is attached hereto as Exhibit "B."

⁶ As between Spectrum and the school districts, RCOE asserts that Spectrum is contractually bound by the trade in value the parties agreed upon and may not recover additional funds from the districts.

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date for purposes of E-rate exchanges. Finally, Spectrum was the party that received the allegedly excess amounts. It is necessary and appropriate that, if funds are to be recovered by USAC, SLD, the party making the overstatement of trade-in value and receiving the allegedly excess funds should be obligated to repay those funds. Thus, the rationale stated in FCC Order No. 99-291 should apply and USAC should recover any funds found due and owing from Spectrum.

2. Perris Unified School District and San Jacinto Unified School District Did Not Participate in E-rate Year 2

Perris Union High School District ("Perris Union HSD") and San Jacinto Unified School District ("San Jacinto USD") were both included in the RCOE FCC Form 471 consortium application⁷, however these two districts chose not to participate after the RCOE application had been filed and approved.⁸ RCOE is informed that Perris Union HSD and San Jacinto USD did not receive any new equipment, and did not trade-in any equipment to Spectrum. However, it appears that Spectrum submitted invoices to SLD on behalf of these districts because both districts are included in the SLD request for recovery of erroneously disbursed funds. To the extent that Spectrum cannot document that it actually provided the equipment to Perris Union HSD or San Jacinto USD, SLD should direct any request for recovery concerning these two districts to Spectrum.

3. Palm Springs Unified School District Did Not Utilize All of the Funding it Requested

Palm Springs Unified School District ("Palm Springs USD") also was included in the RCOE FCC Form 471 consortium application⁹, but it did not utilize all of the funding it requested in the application. RCOE is informed that Spectrum submitted invoices to SLD on behalf of Palm Spring USD for the full amount requested. To the extent that Spectrum cannot document that it actually provided the full amount of equipment to Palm Springs USD, RCOE concurs that SLD should direct any request for recovery of the excess claimed concerning that district to Spectrum.

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⁷ For identification purposes, Perris Union HSD's Funding Request Number is 299377 (approved and funded for \$86,746) and San Jacinto USD's Funding Request Number is 299359 (approved and funded for \$75,728).

⁸ RCOE provided this information to Arthur Anderson when it audited the RCOE consortium application.

⁹ For identification purposes, Palm Spring USD's Funding Request Number is 299355 (approved and funded for \$173,492.15.)

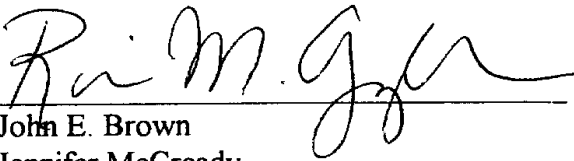
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Conclusion

Based on the foregoing, RCOE respectfully requests that the SLD reconsider or clarify its decision and expressly confirm that it is not seeking recovery of some or all of the allegedly erroneously disbursed funds from RCOE or the school districts.

If your office has any questions regarding this matter, please do not hesitate to contact our office at (909) 686-1450 or via e-mail at <JEBrown@bbklaw.com>. Thank you for your consideration in this matter.

DATED: December 2, 2003

By: 
John E. Brown
Jennifer McCready
Rina M. Gonzales
Attorneys for Riverside County Office of Education